

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 565 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes.

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2. To be referred to the Reporter or not? No.

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No.

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.

5. Whether it is to be circulated to the Civil Judge?

No.

R R PANCHAL

Versus

STATE OF GUJARAT

Appearance:

MR PV HATHI for Petitioner

Ms. Binoda Gajjar AGP for Respondents

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 10/07/96

and 11.07.96

ORAL JUDGEMENT

Ramanlal R. Panchal has filed the present petition under Article 226 of the Constitution to quash and set aside the order passed on 31.8.84 by respondent no.2 Director of Animal Husbandary.

2. The petitioner was initially appointed as Milk Procurement Supervisor in the office of the Regional Dairy Development. This Regional Dairy Development was a section of Director of Animal Husbandary. The petitioner was working in that capacity from 2.12.1965 to 1969 at Rajkot Dairy. In the year 1969 Government of Gujarat decided to hand over the Rajkot Dairy to Rajkot District Gopalak Milk Procudurs Co.operative Sangh Ltd. After the said decision Government employees were given option of either accepting employment with the said Sangh or to get repatriation. The petitioner opted for his repatriation but as there were no immediate vacancies the petitioner and others who had opted for repatriation were continued with Rajkot Dairy by way of deputation.

3. On 6.2.72 an order of repatriation and absorption in suitable vacancies in the Animal Husbandary Dpartment was passed by the Government by way of Government Resolution. Accordingly the petitioner was repatriated and he was initially posted as village level worker. The pay scale of Milk Procurement Supervisor and Village Level Worker was one and the same as on 30.3.79. The petitioner was transferred and posted as Investigator and he joined in that post on 1.4.1979. The petitioner's posting and transfer were made as public servant and in the public interest. Thereafter, the Government of Gujarat had decided to amalgamate the seniority of the persons who are working in Animal Husbandary section as well as dairy section and to prepare a common seniority list as per the Government Resolution dated 28.5.82 common seniority. As per the said Resolution, the petitioner and other transferees who were absorbed in Animal Husbandary Section were entitled to have their original seniority and the seniority was to be fixed on the basis of length of service in the original service. Accordingly seniority list was prepared and the present petitioner was shown at sr. no.13. Thereafter on 31.8.84 the Director of Animal Husbandary passed an order and changed the placement of the present petitioner in the seniority list by placing him at sr.no.44A by deleting his placement at sr. no.13. Said change in the said seniority list was effected without hearing the petitioner and without giving any opportunity of being heard to the present petitioner. Therefore, the petitioner had made a representation and his representation was also rejected by letter dated 14.9.84

by saying that there was no question of giving him any hearing and his seniority was changed, as he was not holding the required qualification to that post. He passed SSC examination in 1977 and one of the essential qualifications for the post of Investigator was to have the qualification of SSC examination passed. The petitioner has therefore, come before this Court and seeks quashing of the said order which according to him was passed arbitrarily, illegally and contrary to the Government Resolution dated 20.5.84.

4. It is the contention of the respondents that the qualification for holding the post of Investigator, a person ought to have passed SSC examination or its equivalent examination with 55 per cent marks with mathematics as one of the subjects. When the petitioner was initially appointed as an Investigator on 1.8.72 he had not passed SSC examination and he passed the same in the year 1977. Therefore, from that i.e. the year of his passing SSC examination, he has been given the seniority and therefore, the alteration made in the seniority list by the respondent no.2 is legal and valid and consequently, no illegality is committed by the respondent. In the circumstances, it is contended that the petitioner's petition be dismissed with costs.

5. At the outset it may be stated that there is no dispute of the fact that the petitioner was originally appointed as a Milk Procurement Supervisor in the Regional Dairy Department under the control of the respondent no.2-Director of Animal Husbandary. It is also an admitted fact that Regional Dairy Department was running Rajkot Dairy till the year 1969 and in the year 1969, Government had decided to hand over said Rajkot Dairy to the Sangh. It is also an admitted fact that at the time of handing over the said Rajkot Dairy to the Sangh option was given to the employees to opt for services in the Sangh or to opt for repatriation to the original department. It is also an admitted fact that accordingly the petitioner had opted for his repatriation to Government job. Handing over of the Rajkot Dairy to the Sangh had left the respondent without any dairy activity and consequently present petitioner and 8 others were continued with the Sangh in the same dairy by way of deputation. But the Sangh was seeking their repatriation and in view of the same the first order was passed by the respondent no.1 in the month of July 1972. In the said order it has been mentioned as under.

" Since the administration of Milk Storage Scheme, Rajkot having been handed over the Rajkot

District Gopalak Co-operative Milk Producing Federation permanently and since the services of Procurement Supervisor working in the scheme for collection arrangement of Milk no longer required by Gopalak Sangh, question of those Procurement Supervisors other than those who have opted for remaining in Sangh Services to be absorbed in suitable vacancies of Animal Husbandary Department was under consideration of the department. The Rajkot District Gopalak Co-operative Milk Producing Sangh has requested for absorbing 9 procurement Supervisor of the Scheme in the vacant posts of the Department vide their letter quoted above at sr. no.1. In the public interest, Procurement Supervisor of Milk Storage Scheme mentioned below who are performing duty on deputation in the services of Sangh as at present, recalling them back from deputation, their appointment is made in the office shown in column no.4 against their names, transferring them on the salary made available now & in the pay scale according to their seniority in Dairy Section."

By the said order present petitioner was posted as Village Level Worker and it has been clearly mentioned that said transfer and posting was made in public interest. Now in view of the above order, it would be clear that the petitioner and other 8 workers were absorbed in the Animal Husbandary Section on account of the handing over of the Rajkot Dairy to the Co-operative sector. The petitioner was accommodated in the Animal Husbandary Department and he was not recruited in the Animal Husbandary Department. The transfer of the petitioner and other 8 persons from the dairy department to Animal Husbandary Department, was possible as both the departments were under the control of one and the same head viz. respondent no.2 Animal Husbandary.

6. It is an admitted fact that present petitioner was working as Investigator since 1.4.79 as per the order issued by the respondent no.2 on 13.3.79. It must be also mentioned here that it is an admitted fact that the pay scales for the Milk Procurement Supervisor, Village Level Worker and the Investigator were one and the same. Because of the pay scales being one and the same, the petitioner was accommodated in the Animal Husbandary Department and on account of the said accommodation he was not to be put in any financial loss and so also the respondents were not to be put in any financial loss by

way of lumpsum payment to the petitioner for his discontinuation in service.

7. After the repatriation of those employees who were in Regional Dairy Department, Government had decided to have the consolidated seniority of Animal Husbandary and Dairy Section employees who were performing the duties in the pay scale of Rs. 260-430 in the post of Progress Assistant in the pay scale of Rs. 260-400 in the post of Computer Investigator, Punch Operator, Punch Verifier and to publish a seniority list. While passing the said Resolution the following terms are laid down:

"1. Those cadres/pay scales of posts and recruitment Rules which may be absolutely identical, its seniority will have to be unified.

2. Taking total years of service in respective identical cadre of the employee into consideration, seniority will have to be fixed in respective cadre.

Therefore, as per the Government Resolution when seniority list was to be prepared, the service of the employee in the respective department was to be counted. There is no dispute of the fact that earlier seniority list was prepared by taking into consideration the length of service and accordingly, the petitioner was placed at sr.no.13.

8. The order by which the petitioner and other 8 persons were absorbed in Animal Husbandary Department and when they were given posting in the same department, it was nowhere mentioned that they were to be absorbed in a particular cadre only in case if they happen to possess the requisite qualifications which were required for being selected in the said post. The Government Resolution by which seniority list was to be prepared also does not show that while fixing the seniority, the qualifications of the persons were to be taken into consideration. Therefore, in the circumstances the contention of the respondents that because of the petitioner was not holding the qualification of having passed the SSC examination, he could not be considered in the cadre of Investigator, could not be accepted.

9. In the reply affidavit it has been mentioned by the respondents that for the Investigator/Progress

Assistant, Punch Operator and Punch Verifier, the Recruitment Rules 1981 were made in 1981. The petitioner was recruited in the year 1965 and was absorbed in the Animal Husbandary Department in July 1972. Therefore, in the circumstances, said rules could not be said to be applicable to the present petitioner. No doubt it has been mentioned that earlier also the qualification for holding the post of Investigator, one should have passed SSC examination. But no Rule has been produced before me to justify the said contention. Now apart from it, present petitioner was not recruited as an Investigator but he was only accommodated in Animal Husbandary Department and as there was equivalent post of Investigator, he was posted in the said post. Therefore, it could not be said that he ought to have possessed necessary qualification for holding the post of Investigator. The action of the respondent no.2 in altering the position of the petitioner on the ground that the petitioner had not passed SSC examination prior to 1977, is not at all proper and correct. Said action of fixing seniority on that basis is contrary to the Resolution by which it was ordered to fix the seniority of the employees in two departments viz. Dairy Department and Animal Husbandary Department.

10. Therefore, in view of the above discussion I hold that present petition will have to be allowed and the action of the respondent no.2 in modifying the seniority list by the order dated 31.8.84 is hereby quashed and set aside. The petitioner to continue at sr. no.13 in the seniority list and the petitioner is entitled to get all the consequential benefits which may be due to him on account of the said posting in the seniority list. Rule is made absolute. But in the circumstances of the case I direct the parties to bear their respective costs.

(S.D.Pandit.J)